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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,867	09/25/2003	Masahiro Suzuki	NIW-024USCP	5798

959 7590 04/13/2007  
LAHIVE & COCKFIELD, LLP  
ONE POST OFFICE SQUARE  
BOSTON, MA 02109-2127

EXAMINER
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HAGOPIAN, CASEY SHEA

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/670,867		SUZUKI, MASAHIRO	
	<b>Examiner</b>		<b>Art Unit</b>	
	Casey Hagopian		1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

Receipt is acknowledged of applicant's Response to Restriction Requirement filed 2/20/2007.

Please note the instant application has been transferred from Examiner Neil Levy to Examiner Casey Hagopian.

### ***Election/Restrictions***

Applicant elected Group II (claims 3 and 4) for examination. Accordingly, claims 1, 2 and 5-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 2/20/2007. The examiner also requested a species election of one of the compounds found in claim 4. However, after a search and examination, the examiner has decided to withdraw the species election.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Independent claim 3 and its depending claim 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 recites the limitation, "wherein the first active ingredient is pulverized..." in line 8 of the claim. In line 3 of the claim, the first active ingredient is wet milled, thus it is unclear if applicant is

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referring to the wet milling step or if there is another step that comprises pulverizing the first active ingredient. Correction/clarification is requested.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (USPN 5,980,926) in view of Hoy et al. (USPN 5,208,030). Suzuki teaches a water dispersible granule formulation and method of making thereof. Specifically, Suzuki teaches a method of making said water dispersible granule by a) admixing an active agent (e.g., triflumizole), a wetting and dispersing agent (e.g., tristyril phenyl ether, ethylene oxide, sodium polycarboxylate), and water and subjecting the mixture to wet granulation to produce "WDG-SC" with an average particle size of 1.5 microns; b) admixing a wetting and dispersing agent (e.g., sodium alkyl naphthalenesulfonate, sodium

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alkylbenzenesulfonate, a formaldehyde condensate of sodium liginsulfonate), a mineral carrier (e.g., diatomaceous earth) and a second active agent (e.g., potassium chloride) and subjecting the mixture to dry milling to produce "WDG-WP"; c) mixing "WDG-SC" and "WDG-WP" and then granulating and drying the mixture (Example 1). Suzuki also teaches that "any pesticide which is in solid at an ambient temperature, is hardly-soluble in water and preferably has a solubility in water as much as 2000 pm can be used as the pesticidal component usable in the present invention without any limitation, and more than 2 pesticidal components may be used in combination" (col. 2, lines 40-45). Suzuki also teaches particular pesticides including triflumizole, thiuram, fluazinam, anilazine, captan, hexythiazox, benzoximate, tebufenpyrad, ziram, thiophanate-methyl and benzamideixime compounds represented by a general formula (1) (col. 2, lines 45-60).

It should be noted that the examiner is giving the terms "first active ingredient" and "second active ingredient" their broadest most reasonable interpretation. Said terms are undefined in the instant specification and there are a number of disclosed and undisclosed ingredients that read on said terms. Thus, the examiner has interpreted potassium chloride (Example 1) to read on "a second active ingredient" because potassium chloride is a well-known source of potassium in, for example, fertilizers in order to provide plants a required nutrient for growth.

Suzuki is silent to the average particle size of about 3 microns to about 30 microns of the second active agent.

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Hoy teaches an active ingredient dosage device and a method of making said device (col. 1, lines 1-9). More specifically, Hoy teaches including "at least one active ingredient" and comminuting said active ingredient to an "average particle size of less than 5 microns" (col. 1, lines 10-12). Hoy also teaches "the comminution may be effected by dry milling the active ingredient, e.g. by means of micronization, to the desired particle size" (col. 1, lines 20-23). Also, Hoy teaches the active ingredient can be any suitable active ingredient (col. 1, line 36). It should be noted that Hoy's "less than 5 microns" reads on the claimed "about 3 to about 30 microns" because they are overlapping ranges. One of ordinary skill in the art would have been motivated to include a particle size of less than 5 microns because said size promotes "effective, accurate and even distribution" of the active ingredient (col. 6, line 33). A practitioner would reasonably expect an active ingredient with a particle size of less than 5 microns to be evenly distributed when dispersed in water. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the average particle size of about 3 microns to about 30 microns as suggested by Hoy.

### ***Conclusion***

All claims have been rejected; no claims are allowed.

### ***Correspondence***

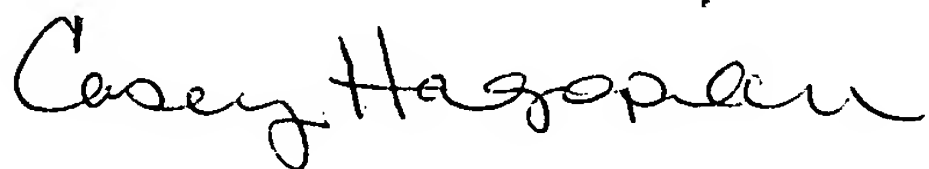
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Casey Hagopian whose telephone number is 571-272-

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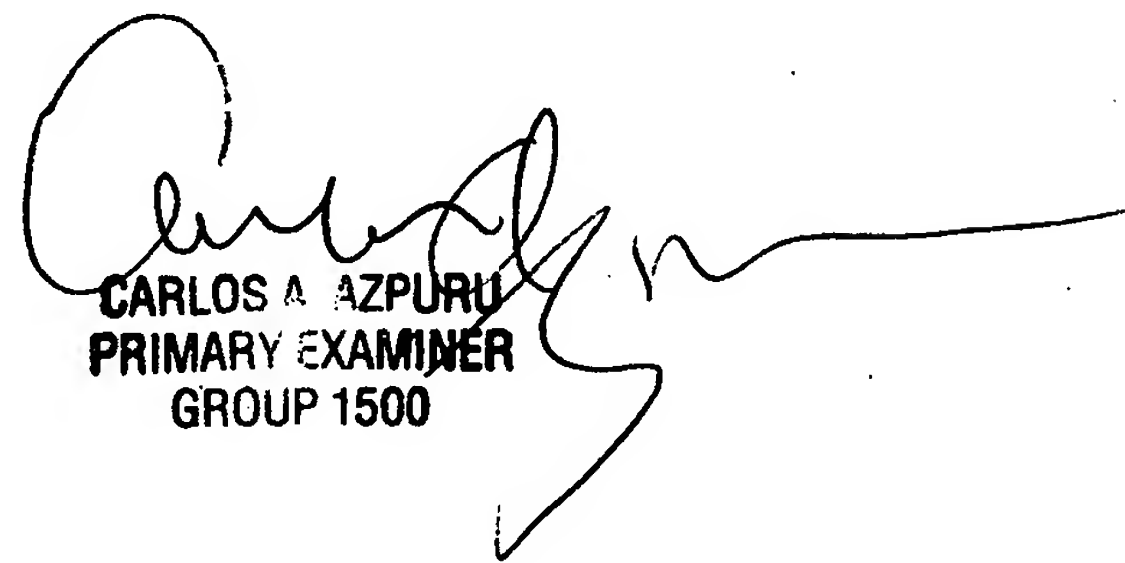
6097. The examiner can normally be reached on Monday through Friday from 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at 571-272-0588. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Casey Hagopian  
Examiner  
Art Unit 1615



CARLOS A. AZPURU  
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